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BEFORE THE ARIZONA CORPORATION COMMISSION

2010 NOV 17 P 2: 12

COMMISSIONERS

Kristin K. Mayes - Chairman
Gary Pierce
Paul Newman
Sandra D. Kennedy
Bob Stump

ARIZONA CORPORATION COMMISSION
DOCKET CONTROL

Arizona Corporation Commission
DOCKETED

NOV 17 2010

DOCKETED BY

[Signature]

IN THE MATTER OF THE
APPLICATION OF ARIZONA
WATER COMPANY FOR AN
EXTENSION OF ITS CERTIFICATE
OF CONVENIENCE AND
NECESSITY AT COOLIDGE, PINAL
COUNTY, ARIZONA

DOCKET NO. W-01445A-05-0389

REQUEST FOR ADDITIONAL TIME
TO COMPLY WITH FILING
REQUIREMENTS

On February 2, 2006 the Commission entered Decision No. 68442 in the above-captioned docket. Decision No. 68422 (the "Decision") approved Arizona Water Company's (the "Company") application for an extension of its Certificate of Convenience and Necessity for its Coolidge system. The first ordering paragraph of the Decision, at page 5, conditioned the approval of the extension on the conditions recommended by Staff, as set forth in Finding of Fact No. 18.

The Company is now requesting an additional period of two (2) years beyond the current compliance date, i.e., an extension to February 2, 2013 (in Decision No. 70844, the date was extended to February 11, 2011) to file the remaining compliance items. In support of this request, the Company presents the following:

1. The Decision concerned three parcels, Parcels One, Two and Three. Pursuant to filings in this docket on December 27, 2006 and December 13, 2007, the Company has

1 complied with the Decision's conditions with respect to Parcels One and Two; therefore, the
2 Company has substantially complied with all of the compliance requirements of the Decision.

3
4 2. With respect to the Vail and Kleck, LLC development (Parcel Three in the
5 Decision), the Company has received an updated water service report from Kam Talebi, the
6 Managing Partner of Vail and Kleck, LLC. A copy of Mr. Talebi's letter, Attachment A
7 hereto, confirms that Vail and Kleck, LLC is continuing with its plans to develop its property
8 and that Vail and Kleck still needs and desires that the Company retain a Certificate of
9 Convenience and Necessity that includes Parcel 3 and that water service will be required.

10
11 3. The State of Arizona, and the United States of America as a whole, remains in
12 the midst of a severe economic recession. (the Commission's Staff made this observation
13 recently in its evaluation of another water utility's request for additional compliance time; see
14 Finding of Fact. No. 14, page 3, Decision No. 71861, docketed on September 1, 2010). No
15 economist or forecaster can say with any certainty when the economy may recover. The
16 recession has had a particularly adverse effect on the real estate market in Arizona, and the
17 impact on the market for development in Pinal County, the Company submits, was not
18 reasonably foreseeable by anyone when the Commission entered the Decision and included
19 post-order conditions. Staff's observation should be considered by the Commission in
20 evaluating the Company's request. In addition, cancelling a Certificate of Convenience and
21 Necessity because of the adverse market conditions that now exist may result in additional
22 barriers to a market recovery and economic hardships when development is ready to proceed.

23
24 4. The Arizona Department of Water Resources has approved (copy attached
25 hereto as Attachment B) a physical availability demonstration ("PAD") for the Company's
26 Pinal Valley system in which all of the parcels in the CCN expansion area are included. While
27 a PAD is not a certificate of assured water supply, it is a precursor to, and a necessary
28 requirement for obtaining a certificate; therefore, the Company submits that the PAD, and the

1 ADWR's approval of it constitutes substantial compliance with that part of the Decision's
2 requirements with respect to Parcel 3, particularly in view of the Company's satisfaction of the
3 Decision's remaining compliance requirements.


4
5 5. The Company is now providing water service to 14 customers in the expansion
6 area approved in the Decision. In consideration of the fact that, except for Parcel 3, as detailed
7 above, the Company has filed all of the compliance items required by the Decision, the
8 Company submits that water service to these customers should not be interrupted, as the
9 Company is in substantial compliance with the Decision, particularly when, as noted in
10 paragraph 3, above, the Company's current inability to satisfy the conditions concerning Parcel
11 3 are beyond the control of the Company, the developer, and the 14 customers who would be
12 adversely affected by the denial of the Company's request.

13
14 6. Finally, as Staff pointed out in its evaluation of the Company's most recent
15 request in this docket, parcel 3 consists of only 160 acres and is essentially surrounded by, and
16 is adjacent to, the Company's existing certificated area, and it is not economically or
17 operationally feasible for another water provider to provide water service in this area.

18
19 In consideration of the foregoing, the Company respectfully requests that it be
20 permitted until February 2, 2013 to comply with the remaining conditions with respect to
21 Parcel 3. This request should not prejudice any other party and, as noted above, the lack of an
22 extension would result in significant adverse prejudice to the customers in the expansion area
23 and the developer who is proceeding in good faith to develop its property in reliance upon the
24 Decision.

1 RESPECTFULLY SUBMITTED this 17th day of November 2010.

2
3 ARIZONA WATER COMPANY

4
5 By: 
6 Robert W. Geake
7 Vice President and General Counsel
8 ARIZONA WATER COMPANY
9 Post Office Box 29006
10 Phoenix, Arizona 85038-9006
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1 Original and thirteen (13) copies of the foregoing filed the 17th day of November 2010 with:


2 Docket Control Division
3 Arizona Corporation Commission
4 1200 West Washington Street
5 Phoenix, Arizona 85007

6 A copy of the foregoing was mailed this 17th day of November 2010 to:

7 Janice Alward, Chief Counsel
8 Legal Division
9 Arizona Corporation Commission
10 1200 West Washington Street
11 Phoenix, Arizona 85007

12 Ernest G. Johnson, Director
13 Utilities Division
14 Arizona Corporation Commission
15 1200 West Washington Street
16 Phoenix, Arizona 85007

17 Brian Bozzo, Director of Compliance
18 Utilities Division
19 Arizona Corporation Commission
20 1200 West Washington Street
21 Phoenix, Arizona 85007

22 By: 

ATTACHMENT A

Kam Talebi, President
Vail & Kleck, LLC
18734 Melrose Chase
Eden Prairie, MN 55347

Date: 6.10.10



Arizona Water Company
Attn: Robert W. Geake
3805 N. Black Canyon Highway
Phoenix, AZ 85015

Dear Mr. Geake:

Vail & Kleck, LLC is following up with you regarding Pinal County Assessor's Parcel No(s): 40133002B and 40133002A which Vail & Kleck, LLC owns. Vail & Kleck, LLC still needs and desires to receive water service from Arizona Water Company to serve these parcels. We hope that the market will improve so that we can begin development within the next two (2) years.

Sincerely,

Vail & Kleck, LLC

BY: 
ITS: 



ATTACHMENT B

JANICE K. BREWER

Governor



HERBERT R. GUENTHER

Director

ARIZONA DEPARTMENT OF WATER RESOURCES

3550 North Central Avenue, Second Floor
PHOENIX, ARIZONA 85012-2105
(602) 771-8500

Via Certified Mail

December 24, 2009

Mr. William Garfield, President
Arizona Water Company
3805 North Black Canyon Highway
Phoenix, Arizona 85015

**RE: Arizona Water Company Pinal Valley Water Service Area
Pinal County, Arizona (Pinal AMA)
Application for a Physical Availability Determination
ADWR #51-700444.0000**

The Department has completed its review of your application for a Physical Availability Determination for Arizona Water Company Pinal Valley Service Area. The Department received the application on November 15, 2007. The study area locations are within Township 4 South, Range 8 East, within portion of Section 36; Township 4 South, Range 9 East, Sections 31, 32, 33; Township 5 South, Range 5 East, and portions of Sections 13, 14, 15, 16, 21 to 28 inclusive, 33, 34, 35, 36; Township 5 South, Range 6 East, Sections 13 to 36; Township 5 South, Range 7 East, Sections 12, 13, 14, 23 to 36; Township 5 South, Range 8 East, Sections 1, 2, portions of 3, 5, 6, 7 to 36 inclusive; Township 5 South, Range 9 East, Sections 4 to 10 inclusive, 15 to 22 inclusive, 27 to 36 inclusive; Township 5 South, Range 10 East, Sections 31, 32 & 33; Township 6 South, Range 3 East, Sections 10 to 16 inclusive, 21 to 28 inclusive, 33, 34, 35 & 36; Township 6 South, Range 4 East, Sections 16 to 21 inclusive, 28 to 33 inclusive portion of Sec. 36; Township 6 South, Range 5 East, Sections 1, 2, 3, 4, portion of Sec. 5, 9 to 16 inclusive, east half of Sec. 17 and 20 to 36 inclusive; Township 6 South, Range 6 East, Sections 1 to 36; Township 6 South, Range 7 East, Sections 1 to 36 inclusive; Township 6 South, Range 8 East, Sections 1 to 24 inclusive, 29, 30, 31 & 32; Township 6 South, Range 9 East, Sections 1 to 24 inclusive; Township 6 South, Range 10 East, Sections 5, 6, 7, 8, 17, 18, 19 & 20; Township 7 South, Range 3 East, Sections 1, 2, 3, 10 to 15 inclusive, 22 to 27 inclusive, 34, 35 & 36; Township 7 South, Range 4 East, Sections 1 to 36 inclusive; Township 7 South, Range 5 East, Sections 1 to 24; Township 7 South, Range 6 East, Sections 1 to 36 inclusive; Township 7 South, Range 7 East, Sections 1 to 7 inclusive, north half of Sections 8, 18, 19, 30, 21 & 32; Township 7 South, Range 8 East, Sections 5 & 6; Township 8 South, Range 6 East, Sections 1, 2, 3, 4, 9 to 16 inclusive, 21, 22, 23 & 24; Township 8 South, Range 7 East, Sections 4 to 9 inclusive, 17, 18, 19 & 20 and GSR B&M in Pinal County, Arizona.

In accordance with A.A.C. R12-15-702(D), the Department has determined that a minimum of 98,841 acre-feet per year of groundwater is physically available for 100 years under A.A.C. R12-15-716(B) for assured water supply purposes in the study area. Although you requested a volume of 103, 485 acre-feet, after a review of the hydrologic study and all issued assured water supply determinations in the study area, the Department has concluded that 98,841 acre feet is physically available.